

## **REMARKS**

Favorable reconsideration, reexamination, and allowance of the present patent application are respectfully requested in view of the foregoing amendments and the following remarks.

### **Summary of Office Action**

In the Office Action, beginning at page 2, claim 8 is rejected under 35 U.S.C. § 112, second paragraph as allegedly indefinite. Claims 1-3, 5, 7-10, 12-32, and 34-36 are rejected under 35 U.S.C. § 103(a) as allegedly being obvious over the Thominet'247 patent.

### **Summary of Response to Office Action**

By this Amendment, claims 1, 3, and 14 are amended, and claims 20 and 35 are cancelled without prejudice or disclaimer. Claims 37 and 38 are added. Accordingly, claims 1-3, 5, 7-10, 12-19, 21-32, 34 and 36-38 are pending in this application, with claims 1, 3, 14 and 37 being the only independent claims.

### **The Claims Define Allowable Subject Matter**

Claims 1-3, 5, 7-10, 12-32, and 34-36 are rejected under 35 U.S.C. § 103(a) as allegedly being obvious over the Thominet'247 patent. Applicant respectfully traverses this rejection, and requests reconsideration for the following reasons.

The Thominet'247 patent discloses a substantially rectangular matrix of identical light sources 10 for use in a vehicle light. The Thominet'247 patent fails to disclose or teach at least the feature wherein at least one of the LED elements is different in size as compared to another of the LED elements, as recited in claim 1 of the present application. In addition, the Thominet'247 patent fails to disclose or teach at least the feature of a plurality of LED elements located adjacent the base and formed in a non-symmetrical array, as recited in independent claim 14. Although the vehicle light of the Thominet'247 patent may function such that "switching

over of the operation of the semiconductor sources 10 of the partial region 22, 24, 26, 28 to the operation of the semiconductor light sources of another partial region” can be achieved, this function does not change the specific structural disclosure of a rectangular and symmetrical matrix of light sources 10. In other words, regardless of function, the Thominet’247 patent only teaches a rectangular matrix of light sources 10 and fails to disclose or teach the feature of a plurality of LED elements located adjacent the base and formed in a non-symmetrical array, as recited in independent claim 14.

With regard to amended claim 1, it appears from page 4 of the Office Action that the Office may argue that the Court of Appeals for the Federal Circuit’s decision in Gardner v. TEC Systems, Inc., 725 F.2d 1338 (Fed. Cir. 1984) is somehow relevant to an obviousness analysis in the present case regarding the feature of at least one of the LED elements being different in size as compared to another of the LED elements. Applicant disagrees with this position and respectfully submits that any possible reliance on the Gardner case is in error. In particular, in Gardner, the issue related to whether claims to specific dimensions of an air bar device which is designed for use in drying the ink used on high-gloss papers were obvious in view of prior art air bar devices that did not specifically disclose dimensions of analogous parts of the air bar device. The Court determined that, in order for a finding of obviousness to stand, evidence must show that claimed dimensional limitations specify a device which does not perform or operate differently from the prior art.

By contrast, in the present case, Applicant is not reciting a specific dimension or size difference with respect to an analogous size of a part in a prior art reference to distinguish the present invention, i.e., Applicant is not claiming LED’s having a particular width dimension to distinguish from the width dimension of the light source disclosed in the Thominet’247 patent. Instead, Applicant’s claims recite at least one of the LED elements is different in size as compared to another of the LED elements. There is absolutely no analogous teaching of at least this feature in the applied art. In addition, and even more importantly, the recited feature allows the presently claimed invention to function differently in that different light distribution patterns

and configurations of the LED matrix can be specifically formed, with higher density and other characteristics, when at least one of the LED elements is different in size as compared to another of the LED elements (see, for exemplary purposes only, Fig. 4 of the present application). Thus, application of the principles set forth in the Gardner case fails on both prongs of the analysis, and it is respectfully submitted that the rejection of claim 1 under 35 U.S.C. § 102(e) is in error, and any contemplated rejection under 35 U.S.C. § 103(a) over the Thominet'247 patent would also be in error.

Furthermore, Thominet'247 also fails to disclose or teach at least the feature of a given ridgeline extending substantially parallel with at least a portion of an edge of the light shielding device, at least one of the LED elements is different in size as compared to another of the LED elements, and at least a relatively smaller one of the LED elements is located closer to the edge of the light shielding device than at least a relatively larger one of the LED elements, as recited in claim 1 of the present application. Nor does Thominet'247 disclose or teach at least the feature of a given ridgeline that extends substantially parallel with at least a portion of an edge of the light shielding device, as recited in claim 3. Thominet'247 also fails to disclose or teach at least the feature of uppermost LED elements of the entire array of LED elements being arranged in two linear rows, the rows being arranged at a given angle with respect to each other, and the given angle being between approximately 15 and 45 degrees, as recited in claim 14.

Because claims 2, 5, 7-10, 12, 13, 21, 23, 24, 26-29, and 36 depend from and respectively incorporate all the features of claim 1, claims 2, 5, 7-10, 12, 13, 21, 23, 24, 26-29, and 36 are also not obviated by the Thominet'247 patent at least for the above reasons for which claim 1 is not obvious, and for the separate and distinct features that they recite. Claims 15-19, 22, 25, 30, 31, 32, and 34 depend from and respectively incorporate all the features of claim 14 and are therefore also not obviated by the Thominet'247 patent at least for the above reasons for which claim 14 is not obvious, and for the separate and distinct features that they recite.

Claims 20 and 35 are cancelled without prejudice or disclaimer, and therefore the rejection of claims 20 and 35 is moot.

Thus, Applicant respectfully requests that the rejection of all claims 1-3, 5, 7-10, 12-32, and 34-36 under 35 U.S.C. § 103(a) be withdrawn for at least the above-noted reasons.

As indicated above, it is respectfully submitted that reliance on the Gardner case to support the obviousness rejection is in error. In addition, it is respectfully submitted that there is no prime facie case of obviousness shown in the Office Action. The conclusory indication that any change in shape or configuration is obvious does not provide the necessary evidentiary basis for supporting an obviousness type rejection based on a single reference - the Thominet'247 patent. Furthermore, with respect to claim 3, there is absolutely no disclosure or teaching of LED elements that are substantially triangular in exterior shape. As shown (for exemplary purposes only) in Fig. 5 of the present application, the triangular shape allows the light source apparatus to include LED elements that are arranged in a manner that corresponds to the shape of a light shielding device and/or a light distribution pattern. Thus, the specific shape, as claimed, provides a unique and novel characteristic and function for the light source apparatus. This feature is not a mere design choice or ornamental change, but imbues practical and useful characteristics to the lamp, which appear to have been ignored during the obviousness analysis set forth in the Office Action. Some of the possible benefits of the specific shape of the LED elements are described specifically at, for example, paragraph [024] of the present specification, which indicates that "If each LED element is substantially triangular or parallelogrammic in exterior shape and arranged side by side, irradiated light of higher brightness can also be obtained by arranging the LED elements more closely. Moreover, it is possible to match the exterior shape of an emission region of each LED element of the light source with the shape of the road side edge towards which light is irradiated, ensuring a good fit with the road side edge and further improving visibility."

It is respectfully submitted that the rejection under 35 U.S.C. § 103(a) over the Thominet'247 patent fails to meet any of the three criteria for substantiating even a *prime facie* case of obviousness. Moreover, at least one specifically claimed element is missing from the Thominet'247 patent (at least the feature of LED elements that are substantially triangular in

exterior shape of claim 3, at least the feature of at least one of the LED elements is different in size as compared to another of the LED elements of claims 2, 5, 7-10, 12, 13, 21, 23, 24, 26-29, and 36 which depend from claim 1, and at least the feature of the array of LED elements is non-symmetrical about the optical axis as recited in claims 15-19, 22, 25, 30-32 and 34 which depend from claim 14). In addition, there is no motivation shown to combine the Thominet'247 patent with any teaching other than Applicant's own disclosure, which is the exact definition of the use of *impermissible* hindsight. Finally, with regard to the third prong of the *prime facie* case for obviousness, there is no evidence that any combination of structure would successfully result in the Applicant's claimed invention.

Thus, Applicant respectfully requests that the rejection of claims 1-3, 5, 7-10, 12-32, and 34-36 under 35 U.S.C. § 103(a) over the Thominet'247 patent be withdrawn for at least the above-noted reasons.

Claim 8 is rejected under 35 U.S.C. § 112, second paragraph as allegedly indefinite. This rejection is respectfully traversed for the following reasons.

In the Office Action it is alleged that Applicant "fails to identify either in the drawings or explain where a given and second ridgeline are located with respect to a base." It is respectfully submitted that the given ridgeline and second ridgeline are defined with respect to the LED elements which, in turn, are defined with respect to the base. In addition, at least Fig. 7 shows an angle  $\theta$  that can be between 15 and 45 degrees as recited in claim 8. Therefore, there is a structural relationship provided between the given ridgeline, second ridgeline, and other structures of the claimed invention, as required.

In view of the above-arguments, Applicant respectfully submits that claim 8 is in compliance with the requirements of 35 U.S.C. §112, second paragraph and clearly and definitely set forth the metes and bounds of the invention. Withdrawal of the rejection of claim 8 under 35 U.S.C. § 112, second paragraph is respectfully requested.

### **New Claims**

New claims 37 and 38 are added to this application to provide an alternate scope of protection for the invention. It is respectfully submitted that claims 37 and 38 are in immediate form for allowance. A Notice of Allowability and issuance of a patent on the subject matter is respectfully requested.

### **Conclusion**


Applicant respectfully submits that the present patent application is in condition for allowance at least for the reasons stated above. An early indication of the allowability of this patent application is therefore respectfully solicited.

If the patent Examiner believes that a telephone conference with the undersigned would expedite passage of this patent application to issue, she is invited to call on the number below.

It is not believed that extensions of time are required, beyond those that may otherwise be provided for in accompanying documents. If, however, additional extensions of time are necessary to prevent abandonment of this application, then such extensions of time are hereby petitioned under 37 C.F.R. § 1.136(a), and the Commissioner is hereby authorized to charge fees necessitated by this paper, and to credit all refunds and overpayments, to the Deposit Account listed on the original application transmittal papers filed in this application.

Respectfully submitted,

Cermak Kenealy Vaidya & Nakajima LLP

By:  /djkl/  
David J. Kenealy  
Registration No. 40,411

**U.S.P.T.O. Customer Number 39083**  
Cermak Kenealy Vaidya & Nakajima LLP  
515 E. Braddock Rd.  
Alexandria, Virginia 22314  
703.778.6610 (v)  
703.652.5101 (f)

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